



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2005

Ms. Angela Scranage
Chair, Board of Directors
Fourth Ward Redevelopment Authority
1516 Gillette Street
Houston, Texas 77019

Ms. Vanessa J. Sampson
Interim Executive Director
Fourth Ward Redevelopment Authority
1516 Gillette Street
Houston, Texas 77019

OR2005-04316

Dear Ms. Scranage and Ms. Sampson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223381

The Fourth Ward Redevelopment Authority ("FWRA") received a request for (1) the draft and/or final audit of Tax Increment Reinvestment Zone No. 14 ("TIRZ"); (2) minutes from a particular board meeting; (3) all draft or final contracts between TIRZ/FWRA and any other parties; (4) the lease for the TIRZ office; (5) documents showing ownership of the TIRZ office; (6) the hours anyone billing TIRZ has spent in its office since the person's relationship with TIRZ, reconciled with hours for which TIRZ has been billed; (7) the status of the phone connection at the TIRZ office; and (8) certain billing records from three Houston law firms. You inform us that some of the requested information either has been or will be released. You also state that FWRA does not hold or have access to some of the requested

information.¹ We note that the Act does not require you to release information that did not exist when FWRA received this request, create responsive information, or obtain information that is not held by or on behalf of FWRA. We also note that you have not accounted for the requested lease for the TIRZ office. We therefore assume that you have released that information, to the extent that it existed when FWRA received this request. If not, then you must do so at this time.² You have submitted responsive information that you seek to withhold under section 552.116 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We also note that you have requested clarification of the request for contracts involving TIRZ/FWRA. You do not indicate that the requestor has responded to your request for clarification. Accordingly, this decision does not address the public availability of any information that may be responsive to the request for contracts. However, should you receive a response to your request for clarification and wish to withhold any responsive information, you must request another decision.³

Section 552.116 of the Government Code provides in part:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, or a municipality is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

¹See Gov't Code § 552.002(a); *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

²See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

³See Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (addressing circumstances under which governmental body's communications with requestor to clarify or narrow request for information toll ten-business-day deadline to request decision under Gov't Code § 552.301(b)).

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116(a)-(b). You assert that the submitted information is an audit working paper. We note, however, that the protection of section 552.116 is available only to “[a]n audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, or a municipality[.]” *Id.* § 552.116(a). You have not demonstrated, and it is not otherwise clear to this office, that FWRA is an entity that may avail itself of the protection of section 552.116. We therefore conclude that you may not withhold any of the submitted information under section 552.116 of the Government Code. As you claim no other exception to disclosure, the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

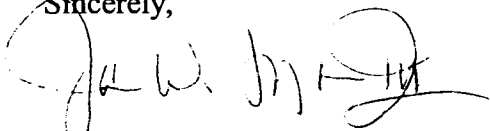
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 223381

Enc: Submitted documents

c: Mr. Timothy J. O'Brien
1303 Ruthven Street
Houston, Texas 77019-5139
(w/o enclosures)